

In the Matter of:)
)
Implementation of Renewables) Docket No.
Portfolio Standard Legislation) 03-RPS-1078
(Public Utilities Code Sections)
381, 383.5, 399.11 through 399.15)
and 445; [SB-1038] [SB-1078])
)

SACRAMENTO, CALIFORNIA

10:03 A.M.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

John Geesman

STAFF AND CONSULTANTS PRESENT

Tim Tutt

Melissa Jones

Heather Raitt

Gabriel D. Herrera

ALSO PRESENT

William P. Short III
Ridgewood Power Management

Paul Lacourciere
Thelen, Reid and Priest

Nancy Rader
California Wind Energy Association - CalWEA

Steven Kelly
Independent Energy Producers Association

Michael Theroux
Theroux Environmental

Thomas Tanton
T2 & Associates

Janis C. Pepper
Clean Power Markets

Jack Pigott
Calpine Corporation

I N D E X

| | Page |
|------------------------|------|
| Proceedings | 1 |
| Opening Remarks | 1 |
| CEC Staff Summary | 1, 3 |
| Schedule | 3 |
| Comments/Questions | 6 |
| Closing Remarks | 55 |
| Adjournment | 55 |
| Reporter's Certificate | 56 |

P R O C E E D I N G S

10:03 a.m.

PRESIDING MEMBER GEESMAN: This is a meeting of the California Energy Commission's Renewables Committee on the renewable portfolio standard phase two implementation Committee report.

I'm John Geesman, the Presiding Member of the Commission's Renewables Committee. This item is supposed to be taken up at the Commission's October 8th business meeting. We're holding this hearing today to gather verbal comments on the Committee report.

We will accept written comments until the close of business today. So if you've not already filed your written comments, you need to get them to us by closing business.

In making verbal comments to us it will be most helpful if you can refer us to a particular page in the report. No issue is too trivial to raise on this because we're getting very close to final adoption.

So, with that, I guess we'd start with the staff summary. Tim.

MR. TUTT: Thank you, Commissioner

1 Geesman. My name is Tim Tutt, Technical Director
2 of the Renewable Energy program. With me is
3 Heather Raitt of renewable energy program staff,
4 and Gabe Herrera is our legal counsel.

5 Thank you for coming to this hearing on
6 the phase two decision report. This is the second
7 hearing we've had on the phase two decision
8 report. We did put out a preliminary phase two
9 decision, and this is the final Committee
10 decision's report on that.

11 The report covers, as we've talked
12 before, of the distribution of supplemental energy
13 payments, the development of a certification
14 process for renewable facilities, and the
15 development of an accounting system.

16 We've had considerable public input
17 previously on this report. We originally were
18 going to adopt this at the September 17th business
19 meeting, but that meeting was canceled and we were
20 moved to the October 8th business meeting.
21 Consequently we had an opportunity to consider
22 addition comments on this report. And we took
23 advantage of it by scheduling this hearing.

24 We will be translating these policies
25 once the report is adopted into specific

1 guidelines. The schedule for that, it will be
2 roughly a two-week extension to the schedule we
3 had been working on. We'll have that schedule
4 available by November for you all.

5 I'd just like to summarize briefly some
6 of the changes that we have made in this final
7 draft compared to the preliminary Committee draft.

8 First, in terms of the interim tracking
9 system, we acknowledge that the Energy Commission
10 has discretion to develop the tracking system
11 through guidelines, not regulations. That's a
12 change tat we realize we have the legal authority
13 to do that through guidelines. We prefer doing it
14 that way so it will speed up the development of
15 the interim tracking system, we believe.

16 In terms of the definition of new we
17 previously had suggested that a new facility had
18 to be online after January 1, 2002. We now
19 recognize that we will plan to update that
20 periodically, although we were pretty vague about
21 exactly when. We're not saying every two years,
22 but we do recognize the need to update that
23 periodically.

24 We have made a lot of changes in the
25 definition of repowering, adding specific

1 definitions for technologies to what you need to
2 change to prime generating equipment to be a
3 repower.

4 Just to clarify, when you do repower you
5 still have to meet the definition, you have to do
6 that investment after January 1, 2002, or any
7 subsequent date; that's part of our definition of
8 new to be eligible for SEP payments.

9 We have included a replacement value
10 option for repowers, which will allow, if you
11 don't have tax records available, or if they are
12 difficult to get, and you do have available a
13 replacement value method to qualify as a repower.

14 We recognize that the limitation of
15 SEPs, the exclusion of those for bilateral
16 contracts at this point in time only apply to IOU
17 contracts. We are deferring decision on how that
18 would apply or not for ESP and CCA contracts to a
19 future time.

20 We have decided after hearing comments
21 on the preliminary document that SEP payments can
22 be established for contracts of less than ten
23 years. Previously we had said even though the PUC
24 could authorize contracts of less than ten years,
25 the SEP payments would not be available for those

1 contracts.

2 We still believe there is merit in
3 having a lower limit on the number of years that
4 you can have a contract and get SEP payments.
5 We've established a limit of three years for those
6 contracts.

7 We included an additional recognition
8 that decisions about SEP payment terms for ESPs
9 and CCAs will be deferred. We've established a
10 possible appeal process for someone who, if they
11 have an SEP award, like our previous decision they
12 can't get a second. But if the failure of the
13 first contact with the utility is not their fault
14 then there's an appeal process that they can go
15 through so that they can possibly get a second SEP
16 award. And we've made a variety of other small
17 changes to the guidelines -- or to the decision.

18 With that summary of changes I invite
19 parties to present any comments that they have.
20 We request you come to the podium, or actually the
21 table; speak into the microphone so that your
22 comments can be captured by the court reporter.
23 And please identify yourself prior to giving your
24 comments.

25 PRESIDING MEMBER GEESMAN: And I have

1 one blue card filled out from Bill Short at
2 Ridgewood.

3 MR. SHORT: Yes. And also Paul
4 Lacourciere --

5 PRESIDING MEMBER GEESMAN: Okay.

6 MR. SHORT: Why don't you both come up.

7 MR. SHORT: My name's not that hard.

8 PRESIDING MEMBER GEESMAN: Yeah, I had a
9 little trouble with Paul's name.

10 MR. SHORT: With Lacourciere? Okay.

11 PRESIDING MEMBER GEESMAN: Do you have a
12 card, Paul?

13 MR. LACOURCIERE: I thought I did.

14 PRESIDING MEMBER GEESMAN: If you don't
15 you need to spell your name for the court
16 reporter.

17 MR. LACOURCIERE: Okay.

18 Spell my name real quick for you here.
19 It's L-a-c-o-u-r-c-i-e-r-e.

20 PRESIDING MEMBER GEESMAN: And you're
21 from the lawfirm of Thelen, Reid and Priest?

22 MR. LACOURCIERE: That's correct.

23 PRESIDING MEMBER GEESMAN: Better spell
24 that one, too.

25 (Laughter.)

1 MR. LACOURCIERE: T-h-e-l-e-n, next word
2 R-e-i-d and Priest, P-r-i-e-s-t.

3 PRESIDING MEMBER GEESMAN: Great.

4 MR. SHORT: I'm Bill Short and I'm Vice
5 President of Power Marketing of Ridgewood Power
6 Management, and indirectly Ridgewood Olinda, as
7 well as also Ridgewood Renewable Power.

8 Basically we're here largely to
9 compliment the Commission. We think that they
10 responded well to the issues that we raised back
11 in July in our filing.

12 We specifically think that largely with
13 respect to the issue of repowering which is on
14 page 10 over to page 11, we think that what is
15 proposed there with respect to the 80 percent
16 test, the use of tax records is adequate, and we
17 think we can live with that with respect to our
18 projects.

19 Going on to the next issue which is
20 certification and registration. That's on pages
21 27 and thereabouts. We asked for precertification
22 and we think that again what's laid out there is
23 something that has to be more fully developed, and
24 we think it would be developed after this
25 proceeding is concluded. But we can, again, live

1 with that.

2 We do need an ability to essentially
3 come to the Commission with the facts and the
4 circumstances about our power plants; lay them out
5 on the table and get a green light -- let's call
6 it maybe an amber light -- to go ahead with our
7 project. Okay, so --

8 PRESIDING MEMBER GEESMAN: And that's
9 important from a financing standpoint?

10 MR. SHORT: Very important, that we know
11 essentially -- well, if it's going to be a red
12 light, we'd like to know that very quickly.

13 PRESIDING MEMBER GEESMAN: Right.

14 MR. SHORT: And we can live with an
15 amber light. We'd like to see if we can get a
16 green light.

17 Now, obviously over time, I think, as
18 the Commission becomes more comfortable with
19 people bringing proposals there'll be essentially
20 a precedent value there. And we'll know what does
21 or does not succeed. And we will adjust our
22 business plan accordingly. But it's essential
23 that essentially precertification be there.
24 Especially if you're going to repower any
25 facility. Okay?

1 MR. TUTT: Bill, in that regard if we
2 were to precertify someone who's going to repower
3 they would bring to us information indicating that
4 they plan to spend the funds that is necessary to
5 meet the criteria.

6 MR. SHORT: Yes.

7 MR. TUTT: And then we would get some
8 amber signal and have to verify that they actually
9 did make those expenditures commensurate with 80
10 percent criteria.

11 MR. SHORT: I think we would have -- we
12 would come to you with pretty much what I had to
13 take up to our management. That we essentially
14 are going to spend, I'll call it \$4 for every \$1
15 remaining tax basis on the facility. We might
16 even try to make that a little bit more.

17 I don't have a problem, Tim, coming back
18 to you and essentially showing you the final
19 records, because you've got audit provisions in
20 here. And I think that that's fine, also. You
21 shouldn't essentially just exclusively accept my
22 word. I have no problem if you'd like to --
23 giving you audit rights if you would like to. I
24 don't really have a problem giving to you
25 essentially the final cost numbers. We're not

1 trying to hide anything from the Commission here
2 with respect to expenditures that we intend to
3 make and the expenditures that we will make or do
4 make.

5 MR. LACOURCIERE: I think the primary
6 issue is making sure we come to you; we can say
7 this is what we're planning to do and you come
8 back and say, well, if you do, you know, the
9 following 12 things that you told us you were
10 going to do, then you will receive the
11 certification.

12 MR. SHORT: Really the only issue that
13 we really have that's open is essentially the in-
14 state delivery requirement. We had made some
15 comments in our filings back in July that
16 essentially there was a glitch in here between
17 1038 and 1078. And I think that glitch has now
18 been -- let's call it that has been closed by SD-
19 67. And I think you need to essentially address
20 this here.

21 There's no mention of essentially our
22 comments. We're going to refile those comments,
23 that you've got to effectively say something here
24 on in-state delivery, and that should be that
25 energy has to be delivered in from the facility in

1 what I call real-time in order to qualify for
2 essentially matching funds from the Commission.

3 It's essentially not addressed here.
4 It's largely left as an unanswered item.

5 Certainly with SB-67 when it's enacted I
6 think it has to fall into here. And you've got to
7 essentially reflect the mandatory in-state
8 delivery requirement of power generated outside of
9 California, but delivered in real-time into the
10 state.

11 MR. TUTT: Bill, did the Energy
12 Commission address that concern in our phase one
13 decision? Isn't the phase one decision when we
14 talked about out-of-state power, what we said is
15 that the out-of-state generator would have to
16 deliver the power to the in-state hub or
17 substation designated by the IOU? Would that
18 address your concern?

19 MR. SHORT: I'm not so sure because it
20 basically -- when I said real-time, which is an
21 important issue, a lot of people are saying that I
22 generate my electricity, let's say, the first five
23 days of the week.

24 And on the sixth day of the week I bring
25 in an equivalent amount of energy in, claiming

1 that it came from that.

2 The reason I mention the word real-time
3 is that we have had this issue back east
4 essentially where people have alleged that they
5 generate electricity during the month. And on the
6 last day of the month they essentially schedule
7 the electricity in from the neighboring power
8 pool. And they call that essentially wind power
9 or biomass or whatever it is.

10 And we want to essentially close that
11 potentiality that somebody could claim, well, gee,
12 I'm delivering energy in. It's just not generated
13 at the same time. And what you would do, in
14 theory, you would run some fossil unit to generate
15 that power and export it out of that neighboring
16 pool into here and claim that it was renewable.

17 That's what we're essentially trying to
18 close. That's what SB-67 was.

19 MR. TUTT: Doesn't that prejudice the
20 eventual use of regs in some fashion from out of
21 state?

22 MR. SHORT: No. Because basically
23 what's really happening -- we went through this
24 debate largely in New England. We're a large New
25 England generator of renewable power. And

1 essentially what is really happening, you're
2 trying to capture the air emissions. And if you
3 don't essentially bring the power in, how can you
4 claim that the air emissions from that biomass
5 plant or that geothermal plant actually suppress
6 fossil generation here in the state.

7 So you largely have to have the match of
8 essentially the hourly production of the biomass
9 generator in Oregon with essentially a tag into
10 California accepted by the Cal-ISO. If you don't
11 do that then people will essentially say, oh, gee,
12 it's not closed here; can I do this monthly
13 computation at the end of the month. Schedule
14 electricity in and then claim it.

15 Some people have actually raised the
16 point, well, gee, if even I show power flows that
17 occur I can claim those power flows in. I think
18 you've got to nail this down. We've seen this
19 come back repeatedly on the east coast as people
20 attempt to find another way to not have -- in
21 other words, they want to generate in a distant
22 locale; claim that the power got into the pool
23 where you have an RPS, and then get the value of
24 the RPS.

25 But nothing changes in the area where we

1 have an RPS. And they keep trying one avenue
2 after another to essentially skirt around the
3 delivery requirements.

4 We're not saying that power out of state
5 should never qualify, but it has to come in here
6 and has to affect dispatch. Because by affecting
7 dispatch it will back off, more likely than not,
8 fossil generation and therefore improve the air
9 quality. Isn't that one of the purposes behind
10 the California RPS?

11 PRESIDING MEMBER GEESMAN: I think I
12 understand your point.

13 MR. SHORT: So essentially that's really
14 the issue, is the in-state delivery requirement.
15 Much more definitively spelled out.

16 PRESIDING MEMBER GEESMAN: I think I
17 understand your point; and you say SB-67 addresses
18 that?

19 MR. SHORT: Yes.

20 PRESIDING MEMBER GEESMAN: He hasn't
21 signed that yet, has he?

22 MR. TUTT: I don't believe so.

23 MR. SHORT: I don't believe so, either.
24 As of Friday he hadn't signed it.

25 PRESIDING MEMBER GEESMAN: Okay.

1 MS. JONES: And it seems that you're
2 also raising a REC question that will not be
3 resolved in this timeframe. It's something that
4 gets resolved at a later date, because you're
5 suggesting that the ISO has to certify REC.

6 MR. SHORT: Well, basically what has to
7 happen is that -- and this is how it occurs back
8 east. In New England we have hired the APX,
9 Automatic Power Exchange, to run the NEPool
10 Generation Information System.

11 And essentially the APX will get the
12 data feed from ISO New England, the equivalent of
13 Cal-ISO. And then, to the extent there are
14 imports, APX will then go, for example, to the New
15 York ISO, okay. Let's say, for example, would go
16 to BPA and verify generation records. It's all
17 done independently. There's very complicated
18 rules. I'd be more than willing to share them
19 with you, but they're 45 pages single-spaced. And
20 there's an enormous amount of detailed wordings on
21 how imports are handled.

22 But what happens is that essentially it
23 is capable of creating a REC -- there are no RECs
24 in New York, for example -- for imported power
25 that comes into New England.

1 And one of the problems we'll face in
2 due course of time is what's a REC in New York
3 isn't the same as a REC in New England. There's
4 different -- believe it or not, there's different
5 philosophies of what should be in a REC, and what
6 goes with it, et cetera.

7 In the New York system, as it's
8 tentatively set up, would be different from the
9 New England system.

10 PRESIDING MEMBER GEESMAN: Yeah, we
11 don't want to get into the RECs question in this
12 report.

13 MR. SHORT: Yeah.

14 PRESIDING MEMBER GEESMAN: Because
15 that's teed up for future resolution.

16 MR. SHORT: Yes.

17 PRESIDING MEMBER GEESMAN: And as a
18 government program, we always want to have
19 something to work on in the future.

20 (Laughter.)

21 PRESIDING MEMBER GEESMAN: As I
22 understand your point, though, in response to
23 Gabe, you don't think that our phase one report
24 adequately addresses this because of the problem
25 of no explicit real time or contemporaneous

1 obligation to make the delivery.

2 MR. SHORT: Yes.

3 PRESIDING MEMBER GEESMAN: And you also
4 believe that it is satisfactorily addressed in SB-
5 67, which is yet to be signed, but I'm not certain
6 if we're supposed to presume that it will be
7 signed or not, but I certainly have the
8 presumption that it will be signed and go into
9 law.

10 If, in fact, that presumption is
11 correct, do we need to say anything at all in this
12 report? Or are you simply calling our attention
13 to the fact that an important issue isn't
14 addressed in this report and will be addressed in
15 statutes shortly?

16 MR. SHORT: Well, certainly if SB-67
17 becomes law, and these regulations have not been
18 promulgated in final form, it would just, in my
19 opinion, help close the door and complete the
20 cycle.

21 I'd hate to see the following, somebody
22 reads this report and reads it, says, well, gee,
23 this is what the regs are. I know what the
24 statute says, SB-67's enacted, and it creates this
25 ambiguity. And people embark down a road, spend

1 money and time and find out that there's a lot of
2 people that say, no, that's not the way it is.
3 And they're going to have a fight on their hands.

4 Because some of us believe that there
5 should be in-state delivery requirements as we
6 described in the RPS regulations.

7 MR. LACOURCIERE: I think what we're
8 talking about here is not something that's
9 inconsistent with the existing statutes. Some of
10 the things are already required by the existing
11 statutes. And SB-67 just adds a further
12 clarification.

13 PRESIDING MEMBER GEESMAN: It clarifies
14 them, right.

15 MR. HERRERA: So, Bill, let me just
16 follow up on this. Are you suggesting that
17 perhaps the future utility contracts won't require
18 some sort of real-time delivery? Because
19 essentially what we're doing is we're conditioning
20 the out-of-state approval on satisfaction of
21 utility contracts. The utility contracts require
22 these generators to provide power in the real time
23 to some in-state hub, then that's what they're
24 going to need to do to qualify for SEP payments.

25 MR. SHORT: Well, I think that if you

1 look at some of the reasons why you have an RPS
2 such as the job issue, the property tax issue,
3 essentially the air quality issue, if what seems
4 to happen is when you really get people to say,
5 well, did you want these benefits. If you want
6 the benefits of those issues, then you have to
7 more or less have an in-state delivery
8 requirement.

9 Or essentially what you will get is
10 renewables built in distant locations and they
11 will have no impact essentially on the states that
12 have the RPSs. And it will be like a flow of
13 funds out for no commensurate benefit in.

14 You'll have a cheaper RPS cost of
15 compliance, but you really won't have anything
16 other than that.

17 MR. TUTT: Somebody builds a wind
18 facility up in the northwest. And then as they
19 were delivering the power they backed off Columbia
20 Dam and they were delivering the wind power to
21 California. Would that meet the in-state delivery
22 requirement?

23 MR. SHORT: Yeah, basically --

24 MR. TUTT: There's no additional flow
25 coming in, but there's --

1 MR. SHORT: Yeah, we've actually -- we
2 addressed that issue, also, because the ties
3 between New York and New England, for example, run
4 full most of the time. Okay. You have to
5 schedule it in.

6 And those are not -- they're not
7 horribly onerous requirements. You just have to
8 literally schedule in your facility with
9 sufficient amount of lead time.

10 It's a lot easier, obviously let's say a
11 biomass plant or geothermal plant. You would
12 probably do an annual reservation, and then taking
13 out the periods of time you have periodic
14 maintenance. And you will back off -- it is true
15 that you will back something off that may have
16 been exporting, such as Columbia River Hydro.

17 MR. HERRERA: Maybe some coal power.

18 MR. SHORT: And maybe some coal power.

19 PRESIDING MEMBER GEESMAN: Now, this is
20 a report to the full Commission. It's not
21 regulations. It's not even guidelines, although
22 it will govern the guidelines that we subsequently
23 adopt.

24 In looking through the report I believe
25 the only point at which this deliverability issue

1 is addressed is at page 40 under the discussion --

2 MR. SHORT: Yeah, carry on to 41, yes.

3 PRESIDING MEMBER GEESMAN: -- under the
4 discussion of the accounting system. And what it
5 says, in the operative part, is the Committee
6 recommends that the Energy Commission work with
7 the California ISO and other stakeholders to
8 determine the ability to verify whatever in-state
9 delivery requirements are ultimately imposed.

10 So, having understood your point, and
11 also understanding that SB-67 basically is
12 consistent with your point, and would, in fact,
13 put that into statute, is not clear to me in this
14 Committee report what it is you'd like us to do.

15 I acknowledge the points you're making.
16 I'm not certain I want to be drug into
17 establishing right now whatever in-state delivery
18 requirements are ultimately imposed. Again,
19 that's something I'd like to keep for future full
20 employment of our staff.

21 (Laughter.)

22 PRESIDING MEMBER GEESMAN: But I want to
23 make certain that I'm not misunderstanding you.
24 You're making a good point; sounds like the
25 Legislature has agreed with that point. And it

1 will shortly become law. Do I need to do anything
2 more in this report?

3 MR. LACOURCIERE: I think what we
4 originally asked was that you add an in-state
5 delivery requirement that requires the generators
6 to schedule and deliver electricity into the
7 state.

8 PRESIDING MEMBER GEESMAN: Right. And I
9 think we addressed that, or attempted to address
10 it in our phase one report.

11 I'd like to see the written comments you
12 file. And we will consider it. But, right now
13 I'm not inclined to think that we need to actually
14 change this somewhat vague and ambiguous sentence.

15 (Laughter.)

16 MR. SHORT: Well, obviously we're more
17 inclined to think you'd try to define it and make
18 it less vague.

19 PRESIDING MEMBER GEESMAN: Yeah. No, I
20 understand.

21 MR. SHORT: We're all in favor of full
22 employment.

23 PRESIDING MEMBER GEESMAN: What else --
24 have you got anything else that you want to bring
25 to our attention?

1 MR. SHORT: I think the only issue that
2 I may have just moved over is on page 34 when you
3 talk about the REC, the renewable energy
4 certificate, and you simply say -- and we concur
5 with this -- that whatever we do here has to match
6 whatever is done up in the CPUC --

7 PRESIDING MEMBER GEESMAN: Yeah.

8 MR. SHORT: -- and that is to your
9 agency, as well as that agency, should obviously
10 do their work on the REC definition together, not
11 separately, and not try to come up with something
12 that points in different directions. Uniformity.

13 PRESIDING MEMBER GEESMAN: We're firmly
14 committed to that. And I think that commitment
15 will outlast the recall and may outlast the next
16 several terms of governors, so --

17 MR. SHORT: I will tell you, back east
18 we will probably have in, as you go from pool to
19 pool, we'll have different definitions of what the
20 REC is. And the biggest thing is that does the
21 REC include or not include the air emissions. Or
22 who gets the air emissions.

23 And in New York the air emissions are to
24 go to the energy buyer. The REC is something that
25 doesn't have the air emissions. In New England

1 the REC is inseparable from the air emissions.

2 And the REC buyer gets the air emissions.

3 And those are just about as
4 diametrically opposite positions. And that will
5 make those systems incompatible. Because most
6 organization essentially have their own dug-in
7 positions and they're not going to vary much.

8 PRESIDING MEMBER GEESMAN: I think
9 that's an extremely important point, and I hope
10 that we will avoid that in California.

11 MR. SHORT: Yeah, and just to take it
12 one step further. Unless you essentially adopt
13 something similar, either you tie them, tie air
14 emissions to the REC, or separate them. But if
15 you want to have the WECC trading system, you have
16 to have a common definition of what's in the REC.

17 PRESIDING MEMBER GEESMAN: That's
18 absolutely true.

19 MR. SHORT: Thank you.

20 PRESIDING MEMBER GEESMAN: Thank you.

21 MR. LACOURCIERE: Thank you.

22 PRESIDING MEMBER GEESMAN: Nancy.

23 MS. RADER: Good morning; Nancy Rader
24 with the California Wind Energy Association. I
25 wanted to go next just because I want to add onto

1 what Bill said.

2 I agree, and I just wanted to respond on
3 the in-state delivery issue to some of the
4 questions I heard. With regard to the phase one
5 report, that alarmed me. And I provided comments
6 saying wait a minute, SB-1078 requires in-state
7 delivery. I thought I read the law that way.

8 The phase one report says that the
9 generator just has to deliver it to a western hub
10 designated by the purchasing utility. So that
11 could be anywhere in the west, and not necessarily
12 in-state at all.

13 So, that's why CalWEA went to Senator
14 Bowen and asked her to make it very clear this in-
15 state delivery requirement. So I actually would
16 like to see that sentence that you called out on
17 page 40/41 to reflect that requirement.

18 I don't think you need to do anything
19 else but change that sentence, although I do think
20 the phase one report needs to be modified to say
21 that an eligibility requirement of an out-of-state
22 generator includes delivering the power in-state.

23 And I think later, as we implement the
24 accounting system, that's where the full
25 employment act is in --

1 (Laughter.)

2 MS. RADER: -- terms of figuring out how
3 to do that. But I think both the phase one and
4 the phase two reports need to reflect that in-
5 state delivery requirement to give the proper
6 signals.

7 PRESIDING MEMBER GEESMAN: Do you feel
8 the phase one report is inconsistent with SB-67?

9 MS. RADER: I do. I thought it was
10 inconsistent with SB-1078, but --

11 PRESIDING MEMBER GEESMAN: And SB-67
12 will obviously correct that inconsistency, or
13 rather SB-67 will govern.

14 Well, we need to, I think, make certain
15 that anything in this report is consistent with
16 SB-67. I think we should presume that SB-67 will
17 be signed.

18 MR. TUTT: We intend to take a look at
19 that and make sure that we are consistent with SB-
20 67; anticipate -- I would expect that it would be
21 signed prior, actually, to adopting, so we'll have
22 opportunity to verify.

23 PRESIDING MEMBER GEESMAN: Yeah.

24 MR. TUTT: I'd like to state for the
25 record that we have plenty to do without having to

1 create additional --

2 (Laughter.)

3 MS. RADER: I think what's required now
4 is just a few word changes, actually. But, the
5 second point I wanted to echo of Ridgewood's is
6 the importance of the pre-certification process.
7 And along with that, the development of the
8 guidelines as soon as possible, particularly for
9 out-of-state generators.

10 I noticed that in the notice for this
11 hearing it says that you expect to release the
12 first draft of the guidelines for the SEPs and
13 certification of in-state renewable resources in
14 November. I don't know if that in-state was sort
15 of in there purposely to mean not out-of-state, or
16 if you're just sort of using the term, you know,
17 in the legislation.

18 But, I --

19 MR. TUTT: I wouldn't anticipate that we
20 would have separate guidelines for out-of-state
21 resources. They would be included in guidelines
22 for covering SEP payments to the eligible set of
23 resources. They might be a separate section, but
24 we'd have it in there.

25 MS. RADER: Okay, good. I just want to

1 make sure because otherwise they'd be at a
2 disadvantage in not being able to bid perhaps in
3 the first RFPs, and of course, there's already one
4 on the street. So, I just wanted to confirm that.

5 And my one other comment that has not
6 been raised before has to do with repowers. And
7 on page 12, it says all prime generating equipment
8 at facility must be replaced with new equipment.

9 For example, a facility consisting of 25
10 separate wind turbines must, at a minimum, replace
11 each of the 25 wind turbines with new turbines and
12 blades.

13 I read that to potentially say that a
14 project cannot partially be repowered and get SEP
15 payments for that portion of the project. And I
16 hope that's not what was intended. I would like
17 to request that partial repowers be allowed.
18 That's frequently the way repowers are
19 accomplished for a number of reasons.

20 First, some turbines operate very well,
21 and it makes sense, you know, it's not cost
22 effective to replace those turbines. And when
23 you're taking down some other turbines, it makes
24 sense to use those turbines for spare parts for
25 the original set, the non-repowered set. And so

1 it's a cost effective way to do repowers.

2 Sometimes also the purchasing utility
3 does not allow a complete repower. And one of our
4 members experienced that recently.

5 And third, it's possible that a portion
6 of the project land is not permitted for the
7 greater heights of the new turbines.

8 So, for a number of reasons we would ask
9 that you maybe not make the rules right now, but
10 allow for the possibility of partial project
11 repowers, at least when it comes to wind.

12 MR. HERRERA: You know, Nancy, I don't
13 think that was our intent in drafting that
14 language. You know, if you have a 25-turbine
15 project and you only replace 12 of the turbines,
16 then, of course, the 12 turbines that are replaced
17 become the new project. So I think that's
18 consistent with your understanding --

19 MS. RADER: Okay.

20 MR. HERRERA: It was certainly not our
21 intent to limit that.

22 PRESIDING MEMBER GEESMAN: Yeah, I think
23 that's a question, really, of how you define
24 project, or how you define facility. And I
25 believe that we share the intent with you, that we

1 would not engage scenarios saying no, it doesn't
2 qualify because you didn't get all 25. You then
3 have a 12-unit project.

4 MS. RADER: Okay, good. Thanks very
5 much; that's all I have.

6 PRESIDING MEMBER GEESMAN: Steven.

7 MR. KELLY: Steven Kelly with the
8 Independent Energy Producers. I have two
9 comments. One on the RECs. The definition of REC
10 that Bill raised.

11 I think we should wait to see who wins
12 between the Yankees and Boston in the World Series
13 and go with that one.

14 (Laughter.)

15 MR. KELLY: We'll have a universal
16 application, we'll have a precedent set, so we
17 should go with that. Simple solutions to complex
18 problems is where I'm at here.

19 PRESIDING MEMBER GEESMAN: Have you got
20 a preferred choice?

21 MR. KELLY: Well, I'm going for Boston,
22 but they have to beat my A's to get there, but
23 that's unfortunate.

24 I actually think this is a very good
25 report, but I did have one circle here that I

1 wanted to bring to your attention, and Nancy just
2 hit on it.

3 The same issue about the sentence about
4 all prime generating equipment at the facility
5 must be replaced with new equipment, blah, blah,
6 blah. You just finished talking about that.

7 I think the solution is to properly
8 define what at the facility is, or what the
9 facility is. And that will solve your problem
10 about partial, because I'm a little concerned
11 about partial, because that means you don't have
12 to do 80 percent.

13 So I think if you go and define what the
14 facility is, that will solve your problem there.
15 And that was the recommendation or question I was
16 going to bring up to the staff. I don't believe
17 it's defined yet.

18 PRESIDING MEMBER GEESMAN: No, I think
19 you're going to have to look at the guidelines
20 when we release those, and make certain that it's
21 consistent with this discussion, and what I think
22 all of our mutual intent is.

23 MR. KELLY: Yeah. The other comment
24 that I had was there's language in here where you
25 talk about that you wouldn't award SEP energy

1 payments for contracts of less than three years in
2 duration.

3 And I presume the reason for that is
4 because we all agree that this money is designed
5 to foster new investment and so forth.

6 But I'm wondering about the case where
7 the utilities actually have an RPS solicitation on
8 the street that is for up to three years. And
9 that's all there was for people to bid against.
10 What would we do in that situation? Would nobody
11 be eligible for that solicitation of these funds?

12 PRESIDING MEMBER GEESMAN: Under the
13 terms of this report, right. That's right.

14 MR. KELLY: Yeah. And I think we need
15 to think about that. I mean I can see a situation
16 where there might be an RFP or RFO put out in the
17 street by the utility that has a limit in the
18 terms. They've done that in the past.

19 MR. TUTT: Speaking of an RFP for
20 capacity or something for the next three years?

21 MR. KELLY: Well, they put out RFOs and
22 most of it is for, as far as I can tell, the way
23 it looks like it's going to be structured, there
24 may be an energy capacity component to it.

25 But I mean I'm just looking at the

1 hypothetical. I don't know why they would do
2 that, but it could be that they're trying to fill
3 in the valleys or peaks.

4 PRESIDING MEMBER GEESMAN: I think they
5 would do it if they were confident they could get
6 a sufficient volume of response below the market
7 referent price. And I'm not sure that that's a
8 problem from the standpoint of the operation of
9 the RPS program. Be similar to these interim
10 solicitations where there's not been an SEP
11 component available.

12 I'm still a little shaky on having gone
13 down to three years. Because my understanding of
14 the intent of the SEPs is to actually stimulate
15 investment. So I'm concerned that when we shorten
16 that we're increasing the potential for no
17 investment actually occurring, and simply creaming
18 off the stock of existing output that might be
19 redirected from a current contract somewhere.

20 I --

21 MR. KELLY: So your hypothetical would
22 be they'd have an option for up to three years,
23 for example; if they get nothing, then they would
24 have to go out for a longer term. And then this
25 would kick.

1 PRESIDING MEMBER GEESMAN: If that's
2 what fit their particular supply needs. I think
3 where the market referent price line is drawn,
4 probably has a bigger impact than anything else.
5 And the utility's belief in its ability to attract
6 bids below that market price referent. Edison
7 appears to have been very successful without any
8 reference to SEPs.

9 MR. KELLY: That's right. But if even
10 under that scenario if they presume what they
11 believe will be the marketprice reference, and
12 they have a solicitation to glean what's below
13 that, there will be no impact on SEP funds if they
14 meet that goal.

15 PRESIDING MEMBER GEESMAN: Right.

16 MR. KELLY: So it doesn't really matter
17 if you --

18 PRESIDING MEMBER GEESMAN: Right.

19 MR. KELLY: -- actually allowed
20 companies that would bid into that kind of
21 solicitation that are over the market referent
22 point, and meet their supply needs.

23 PRESIDING MEMBER GEESMAN: Right. And
24 then that's similar to the provision for bilateral
25 contracts that are entered into outside the

1 solicitation process. No SEPs are available under
2 those circumstance. Why would the utility do it?
3 Presumably in order to meet its requirements
4 without reliance on SEPs.

5 I think you want to provide those
6 alternative channels to assure that utility's
7 meeting its portfolio requirements at the lowest
8 achievable cost. And I think you want to trot out
9 the SEP incentives in circumstances where the
10 utility can't meet its requirements in any other
11 fashion. And will utilize these SEPs in such a
12 way that they actually do promote investment in
13 new projects.

14 MR. KELLY: Yeah, well, --

15 PRESIDING MEMBER GEESMAN: I think
16 that's the underlying rationale.

17 MR. KELLY: Okay, that's fine. We'll
18 see. I'm looking forward to when we actually have
19 an RFP underneath these rules, or under these
20 guidelines.

21 PRESIDING MEMBER GEESMAN: You're not
22 the only one.

23 MR. KELLY: That'll be the fifth recall,
24 I think, that we'll be getting.

25 (Laughter.)

1 MR. KELLY: Thank you very much.

2 MR. THEROUX: Good morning.

3 PRESIDING MEMBER GEESMAN: Good morning.

4 MR. THEROUX: Michael Theroux, Theroux
5 Environmental. I'm representing Chateau Energy
6 today.

7 I'd like to put a little finer point on
8 the issue of what is a facility. Chateau Energy
9 had suggested that an engineering cost estimate
10 might be a mechanism either in addition to, or
11 instead of, the tax record base.

12 Our recommendation came because of the
13 need to focus on what a facility is. Can I
14 substitute perhaps a different terminology for
15 facility as process stream.

16 If we think about the flow of however
17 the energy is made from start to finish, it
18 reflects more the mechanics, perhaps, of other
19 kinds of industrial processes.

20 We're in a time when certainly there are
21 many stand-alone facilities, but perhaps the real
22 efficiencies will come as we begin to integrate
23 power generation with other kinds of industrial
24 complexes. We don't want to confuse a large
25 manufacturing complex with the power generation

1 process stream. We want to be able to say, well,
2 this is the facility that we're talking about.

3 We also have opportunities, I believe,
4 to have one large industrial complex that might
5 have multiple types of generation on that same
6 site.

7 So I would suggest under those
8 conditions that it is the engineer's cost
9 estimate, the engineering professional's estimate
10 as to what constitutes the facility, what
11 constitutes the process stream that we can rely
12 on.

13 On page 14 you indicate that an
14 independent -- last paragraph, an independent
15 estimate would be appropriate. We would agree.
16 But I might suggest that an engineer's license
17 requires that their statement is a reliable
18 statement that they can be hung for if they fudge
19 it.

20 So in a very real sense a licensed
21 engineer providing a cost estimate is, in its way,
22 an independent estimate, whoever hires that person
23 be damned.

24 I think that might help us get away from
25 a certain kind of confusion. Not having to say

1 that the tax records are good or bad or needed or
2 not needed, but to focus the engineering
3 assessment actually on what element of this beast
4 we're actually trying to repower.

5 On the next page, on page 15, in
6 considering that the alternative proposed, and we
7 would agree, would most often provide a much
8 higher basis. We would ask that whatever the
9 alternatives are, if we believe one will
10 substantially be higher than the other, that
11 that's inappropriate. That the alternatives used
12 to, at least within our best guess, produce apples
13 and apples should produce a very similar result.
14 Or go into that alternative knowing that it might
15 be weighted in some way to compensate for that
16 difference in assessment.

17 I think the only other, as you said, no
18 point is too small --

19 PRESIDING MEMBER GEESMAN: Well, but let
20 me say on what you've just said, Michael, --

21 MR. THEROUX: Okay.

22 PRESIDING MEMBER GEESMAN: -- I do
23 believe that it's appropriate for us to have a
24 preference for the tax records. Realistically we
25 have a very small and an extremely finite staff.

1 And the tax records are significantly easier for
2 us to use as a method of verification than the
3 replacement approach that we outlined as an
4 alternative, recognizing that in many instances it
5 may be difficult to obtain tx records.

6 But I don't want to shy away from the
7 fact that we do have in preference for the tax
8 records. So I guess I am less troubled by the
9 potentially different level of basis involved in
10 using the replacement approach, because I do
11 consider that to be an exception, a circumstance
12 where only if you're unable to obtain and provide
13 the tax records would an applicant consider it
14 desirable to go down that particular replacement
15 methodology road.

16 Would not like to see the replacement
17 methodology used more frequently than tax records,
18 because I think it will impose a substantially
19 greater verification burden on our staff.

20 MR. THEROUX: I would agree with you. I
21 think that the complexity will come from how we
22 define what is the facility.

23 PRESIDING MEMBER GEESMAN: Yeah.

24 MR. THEROUX: If we throw too big a loop
25 around what the facility is, then that second

1 criteria, if we do not have a closely defined
2 determination of what a facility is, and we are
3 missing a piece of the tax records, then we find
4 ourselves in a very difficult situation.

5 PRESIDING MEMBER GEESMAN: Yeah. And I
6 don't have a better response to you than to say
7 still to come.

8 MR. THEROUX: Yes.

9 PRESIDING MEMBER GEESMAN: We'll see
10 what we come up with in the guidelines.

11 MR. THEROUX: One other minor point and
12 I'll let you be. On page 19, second paragraph at
13 the bottom, the Committee makes a comment
14 regarding CEI's recommendation.

15 Slightly off point of what we had
16 intended. The recommendation that we had made in
17 our prior comments was should we actually --
18 should a bidder actually get up to the point and
19 receive a contract, of course they'd be
20 ineligible. It's either one or the other. It's
21 either the prior award or the new funding. We
22 recognize that.

23 And we were not attempting to shy away
24 from that point. Just put us in a position where
25 we cannot lose any prior funding until indeed we

1 actually have a contract in hand. And if we don't
2 get a contract then we're back in the same bucket
3 with everybody else again.

4 Thank you.

5 MS. JONES: Do you have a specific
6 language change you would like staff to make
7 there?

8 MR. THEROUX: Let me read it again here.
9 In the first sentence, although CEI stated that in
10 SB-90 awards should not be forfeited until after a
11 utility contract is signed and SEPs have been
12 approved. The second piece of that can be
13 dropped, because if indeed we're working -- SEPs
14 will be approved -- if indeed we're bidding in on
15 existing funding on the prior award, certainly the
16 SEPs would not be approved under those conditions.

17 So, it's an either/or, not trying to get
18 into both. That might help a little bit.

19 PRESIDING MEMBER GEESMAN: Okay.

20 MR. THEROUX: Anything else?

21 PRESIDING MEMBER GEESMAN: Thank you.

22 Yes, Ms. -- well, Tom, you come first. I'm sorry,
23 Ms. --

24 MR. TANTON: My name is Tom Tanton; I'm
25 here representing Vulcan Power and Sylvan Power.

1 I commend the staff and the Committee for the
2 changes that have been incorporated since the last
3 hearing.

4 I have one sort of clarifying question,
5 I guess, in terms of potential rumor control,
6 which you may wish to address either in this
7 report or in the ultimate guidelines.

8 The hypothetical where rumors are
9 running somewhat rampant amongst some of the
10 developers of renewable projects is if a project
11 has been off-line for a number of years, say two
12 or three, not under contract, and not having
13 received existing project awards under the
14 renewable energy program, are they eligible for
15 SEPs as a new project or not?

16 Not being repowered; just sort of being
17 repainted and refurbished.

18 PRESIDING MEMBER GEESMAN: Right. This
19 goes to our definition of new.

20 MR. TANTON: Exactly.

21 MR. TUTT: Right. I don't know if we've
22 clarified it or we're that clear about it, but the
23 intent certainly is that if you have operated
24 previously in the state, or even out of state, and
25 you have been offline for awhile, then to qualify

1 as new you have to repower.

2 MR. TANTON: Okay. That was my
3 understanding; but I just wanted to make sure
4 here. Thank you, Tim. Thank you, Commissioner.

5 PRESIDING MEMBER GEESMAN: Thank you,
6 Tom. Ms. --

7 MS. PEPPER: Hi, I'm Jan Pepper with
8 Clean Power Markets. And my comments focus mostly
9 on the tracking system.

10 I just wanted to point out a couple of
11 things. One was that we agree with your statement
12 that any facilities that are participating in the
13 RPS need to fully opt into the system. Meaning
14 that the entire output needs to be tracked.

15 And also the idea that a west-wide
16 system would help to allow tracking for facilities
17 that would be providing RECs for other RPS
18 programs.

19 We just wanted to point out that there
20 may be facilities that are providing RECs for non-
21 RPS programs, either within the western states or
22 even outside.

23 And so even having a west-wide system
24 isn't going to solve all of the problems of being
25 able to keep everything in here. That there still

1 needs to be some kind of facility to accurately
2 track RECs that leave California or the WECC. So
3 we just kind of want to point that out that that's
4 something that should be kept in line in designing
5 a system.

6 And then the other part was regarding
7 distributed generation. You made a statement
8 saying that the Committee invites further comment
9 regarding the eligibility of customer-sited grid-
10 connected renewable generators as well as
11 suggestions on how to measure and verify the
12 output from those generators.

13 And I just wanted to point out that I'm
14 working with the Pace Law School Energy Project.
15 And we've been looking at distributed generation,
16 specifically PV. And how to measure and verify
17 the output of PV systems so that they can
18 participate more fully in the certificates market.

19 And we put together a report last year
20 outlining those issues. And, you know, procedures
21 that could be used, or recommendations on how to
22 handle measurement and verification to provide
23 some kind of consistency. And --

24 PRESIDING MEMBER GEESMAN: If you could
25 share that with us it would be very helpful.

1 MS. PEPPER: Yeah, we'd be happy to.
2 And the next phase of that project, or where we
3 are right now, is actually working with different
4 stakeholders, including regulators and state
5 energy offices across the country. And so we
6 would welcome being able to work with you guys and
7 talk about what we've come up with, and how PV
8 might be able to participate in the RPS.

9 PRESIDING MEMBER GEESMAN: That would be
10 helpful.

11 MS. PEPPER: Thanks.

12 PRESIDING MEMBER GEESMAN: Thank you.
13 Anybody else? Good morning, Jack.

14 MR. PIGOTT: Good morning, Jack Pigott
15 with Calpine. And I just have a couple of
16 comments. One, a lot of people today have been
17 talking about the need for a clearer definition of
18 what a facility is.

19 I just wanted to make sure that the
20 definitions that you do have are essentially
21 guidelines as opposed to hard and fast rules.

22 PRESIDING MEMBER GEESMAN: In this
23 document that's right. But when we adopt what we
24 call guidelines they become harder and faster.

25 MR. PIGOTT: I think that it's important

1 that you leave yourself some flexibility,
2 particularly in the definition of repower. And I
3 say that because in many older facilities we have
4 equipment that is no longer manufactured, or that
5 was custom made that, for example, some of our
6 turbines are specific sizes that aren't made
7 anymore. So we would want to re-use the turbine
8 casing, and that sort of thing --

9 PRESIDING MEMBER GEESMAN: Um-hum.

10 MR. PIGOTT: -- in a repower. Also in
11 the definition here you have the term gear
12 assemblies. Most geothermal turbines don't have
13 gear assemblies, but there are some that do. And
14 the specific cases that I'm thinking of are the
15 Gary Shulman units in which the turbines were
16 originally designed for ships. And they have gear
17 assemblies.

18 And in some cases, I believe turbines
19 that were originally designed for a 50 Hertz
20 system, but that were never installed in those
21 places, have been brought here, may have equipment
22 like that. And it may or may not make sense to
23 replace that. In other words there may be no gain
24 in efficiency if it were replaced, and it may be
25 separate from the turbine.

1 So, I would just give yourself enough
2 flexibility to look at individual cases where it
3 would make sense.

4 We're pleased with the changes that
5 you've made to the 80 percent criteria. We like
6 the continuation from the last version of using
7 tax documents. We believe that a number of units
8 are going to be able to repowered based on that,
9 where the alternate definition, at least for
10 geothermal, I doubt that any would ever meet that
11 criteria, or meet the threshold.

12 So, I would request that you at least
13 just leave that as a second option, because I
14 don't believe that for any of our units we would
15 ever come close to meeting that.

16 I guess that's it, those are my
17 comments.

18 MR. TUTT: Jack, in terms of the gear
19 assemblies, would you recommend that we remove
20 that from the list? Or keep it on there but be
21 flexible about it?

22 MR. PIGOTT: Yeah, use it as an example,
23 perhaps. But, I would certainly look at these
24 case-by-case.

25 MR. TUTT: What do your turbines

1 typically have in them, just the turbine rotors
2 and shafts?

3 MR. PIGOTT: If we had an engineer
4 here -- I can't tell you, I don't know.

5 MR. TUTT: Just that runs through --

6 MR. PIGOTT: Rotors, diaphragms, and
7 turbine blades and so on.

8 Thank you.

9 PRESIDING MEMBER GEESMAN: Thanks, Jack.
10 Anybody else? Bill.

11 MR. SMITH: I just want to give, I
12 guess, some background of what's happened since
13 these regulations have come out. And essentially
14 how we view these regulations with respect to the
15 repowers.

16 Obviously when they came out we took a
17 very close look at essentially the tax records of
18 not only our facilities here in California, but
19 also elsewhere.

20 And it's kind of interesting. We have
21 essentially four primary renewable facilities
22 located in the United States, but only one is
23 located here. And we looked at essentially the
24 tax records.

25 We were able to put together accurate

1 tax records. And from that we made the following
2 observations:

3 Number one, our facility in California
4 actually has a very low tax basis. We've owned it
5 for awhile and it's been depreciated down. We
6 actually have facilities located, small
7 hydroelectric dams in the State of Maine where a
8 similar set of circumstances exist. It's kind of
9 ironic we own biomass plants also located in New
10 England; and they actually have a very high tax
11 basis. And we'd have to spend approximately twice
12 as much money to repower them under the California
13 definition as essentially we bought them for, five
14 or six years ago.

15 We also have a very large landfill and
16 we also have to spend probably two or three times
17 more than the thing is worth to repower it.
18 Again, we haven't depreciated it for tax purposes
19 very quickly.

20 So it's kind of ironic that, you know,
21 in one set of circumstances it works very
22 favorably; in another set of circumstances it
23 works not very favorably. But essentially we'll
24 live with it.

25 We've also taken essentially what you've

1 proposed here and we've actually introduced it in
2 Maine PUC as they were going through a series of
3 workshops on how to restructure their RPS. It
4 doesn't work very well.

5 And that has pretty much gotten a lot of
6 legs as the way to essentially repower, the
7 definition of repower to make new in the State of
8 Maine.

9 We've also introduced it last week in
10 the State of Connecticut as a way, also, to
11 essentially take -- have two or three types of
12 technologies that essentially have in-service date
13 questions revolving around whether it's new or
14 old. And we've introduced it there, also.

15 And in both cases, these were somewhat
16 of a workshop, much like we have here, where it's
17 a little bit of give-and-take; it's a hearing, but
18 it's not quite a hearing. And in both cases the
19 commissions, the Connecticut DPUC and the Maine
20 PUC reacted extremely favorably, along with most
21 of the people in the audience. They said, gee,
22 something has come that makes -- how do we
23 essentially take something that was built 20 years
24 ago that may not be very economical, that we can
25 repower and make very economical, and qualify it

1 as new.

2 We do business in numerous states.

3 There's a repowering definition, or something
4 equivalent to that, in the State of Massachusetts.

5 In certain cases it just doesn't work. Our
6 facility in California, no matter how much money
7 we spend, would never be new, even if we totally
8 removed the facility and put a whole new one
9 there.

10 So I got to tell you that I think
11 overall what you're doing here works very well.
12 And we think it could stand a chance of becoming
13 models for certain east coast RPSs.

14 Thank you.

15 PRESIDING MEMBER GEESMAN: Let me ask
16 you, with respect to both the biomass plant that
17 you mentioned and your solid waste --

18 MR. SMITH: Landfill.

19 PRESIDING MEMBER GEESMAN: -- operation,
20 is there something intrinsic to those technologies
21 that keep your depreciable lives longer than in
22 other settings?

23 MR. SMITH: I didn't ask the tax
24 accountants that we have why they're being tax
25 depreciated at essentially slower rates. Didn't

1 ask them.

2 But I say to myself, look, this is how
3 the dice have rolled, and this is what I'm going
4 to get stuck with. In California it works, it
5 works fine for our hydroelectrics. There are
6 different sets of circumstances.

7 Our landfill plant back east has a long-
8 term contract, well above market. And no one's
9 going to shed a tear if we don't get into an RPS
10 under a California repower definition. Trust me,
11 no one's going to lose sleep over it.

12 PRESIDING MEMBER GEESMAN: Do you think,
13 though, that the observations you draw about both
14 of those two plants are plant-specific or
15 technology-specific?

16 MR. SMITH: I think they're just how we
17 decided to depreciate them for tax purposes.

18 PRESIDING MEMBER GEESMAN: Okay.

19 MR. SMITH: And I don't think they have
20 anything to do with the technology. All this
21 equipment that we're largely talking about has got
22 a five-year, what they call makers depreciation
23 life, which essentially it's depreciated to zero
24 over six years.

25 PRESIDING MEMBER GEESMAN: Okay.

1 MR. SMITH: And I don't think the tax
2 test represents -- it may represent in certain
3 cases a high barrier. In most of what we're
4 looking at we're saying it doesn't represent a
5 barrier. Okay. And we would not be really harmed
6 by it.

7 And so actually we've stood up and we've
8 actually said gee, this is one way to get a
9 repower definition.

10 It may make sense, we're going to argue
11 this point back east, you may need to have more
12 than one test. I'm not going to propose it here.
13 I think you've got it, you know, we've gone way
14 too far down this road.

15 But back east it may make sense to look
16 at a essentially what we call the vintage test,
17 which essentially if you increase the production
18 over a baseline period that increase above that
19 production is considered new, and anything old is
20 considered not qualified for the RPS. That's the
21 Massachusetts definition. And that Massachusetts
22 definition means that our new landfill power plant
23 down in southern California would never be new,
24 for example. So you've got real problems with
25 that test.

1 You may need to have more than one test.
2 But I would get these regs out, because we need to
3 get on with life here.

4 Thank you.

5 PRESIDING MEMBER GEESMAN: Michael.

6 MR. THEROUX: Just a brief comment, yes.
7 Michael Theroux. We're right on the line between
8 those things that we're comfortable with as
9 regulatory pathway, and those that are the
10 engineering definitions. I'm not an engineer; I
11 have one in my office.

12 That helps a lot because when I get out
13 of my territory and I ask what's new, what's old.
14 I turn around to the engineer and the answer is,
15 it depends on the specific piece of equipment for
16 the specific use that it's under.

17 Depreciation, tax records and how worn
18 out a piece of equipment is are two completely
19 different worlds in many ways.

20 So, once again, just to point to exactly
21 where we need to make that determination, we're
22 moving into that arena where specific calls have
23 to be made by the engineer on staff. At least
24 leave the place to where the argument can be
25 presented from the engineering side.

1 Good, it was a nice place to drop
2 that --

3 PRESIDING MEMBER GEESMAN: Other
4 comments?

5 Okay, well, this will be on our agenda
6 then for the full Commission's adoption on October
7 8th. Thank you very much.

8 (Whereupon, at 11:05 a.m., the hearing
9 was adjourned.)

10 --o0o--

CERTIFICATE OF REPORTER

I, ALAN MEADE, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Hearing; that it was thereafter
transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
hearing, nor in any way interested in outcome of
said hearing.

IN WITNESS WHEREOF, I have hereunto set
my hand this 2nd day of October, 2003.

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